

REMARKS

The pending Office Action addresses and rejects claims 18-21 and 23-26. Applicants appreciate the Examiner's indication that claims 1-4 and 7-17 represent allowable subject matter. A list of the pending claims are attached for the Examiner's convenience.

Claim Rejections Pursuant to 35 U.S.C. §103

The Examiner rejects claims 18-21 and 23-26 pursuant to 35 U.S.C. §103(a) as being obvious in view of U.S. Patent No. 5,676,666 of Oxland et al. ("Oxland"). At the outset, the Examiner's rejection is unclear. The Examiner argues it would have been obvious to modify Oxland to have "the angular range of about 110 to about 160, as between the proximal and distal portions of the device." (See *Office Action dated July 19, 2007.*) This limitation is not present in any of the pending claims. The Examiner has failed to specify his rejection with regard to the independent claims. Regardless, Applicants respectfully disagree.

Claim 18 reads, in part:

. . . at least one tissue retractor and guide device, having
a guide member having first and second barrels that define
first and second lumens for receiving a tool, and
an *elongate member* having a proximal, handle portion, and a
distal, tissue-retracting portion that extends a distance beyond a distal-
most end of the guide member to form an *extension portion* . . .

Claim 18 plainly requires that the *elongate member* include a distal, tissue-retracting portion that forms an *extension portion* that extends a distance beyond the distal-most end of the guide member.

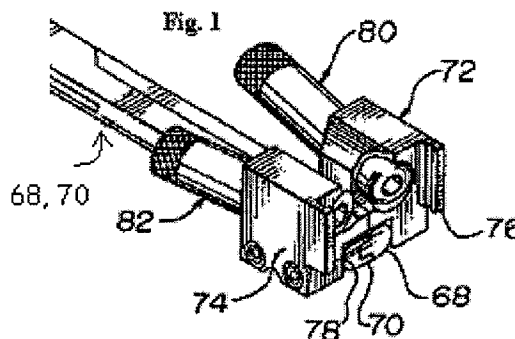
Claim 21 similarly reads, in part:

. . . wherein a distal-most end of the *elongate member* extends
a distance beyond a distal-most end of the guide member to form an
extension portion . . .

Thus, claim 21 likewise plainly requires that the *elongate member* include a distal end that forms an *extension portion* that extends a distance beyond a distal-most end of the guide member.

Oxland simply does not teach or even suggest an extension portion formed on an *elongate member* that extends a distance beyond a distal-most end of the guide member, as required by claims 18 and 21.

As shown in Figure 1 of Oxland, which is reproduced herein, Oxland discloses two elongate blades (68, 70) having a guide head (72, 74) with two guide cylinders (80, 82) attached thereto. The Examiner submits that “[t]he device includes extension cleats (76) on a distal portion of the device...,” thereby seeming to suggest that tabs (76, 78) are the extension portion required by claims 18 and 21. (See Office Action dated July 19, 2007.) The Examiner is ignoring the claim language, which clearly requires that the *elongate member*, not the guide member, include the extension portion that extends beyond the distal-most end of the guide member. The tabs (76, 78) are not formed on a distal end of an elongate member, but rather they are formed on the guide head. Accordingly, Oxland does not anticipate claims 18 and 21, and therefore claims 18 and 21, as well as the claims that depend therefrom, distinguish over Oxland and represent allowable subject matter.



Independent claim 18 further requires:

... a *cross member* adapted to removably connect *two* tissue retractor and guide devices.

Claim 18 further distinguishes over Oxland because Oxland fails to teach or even suggest a cross member that is adapted to removably connect two tissue retractor and guide devices, as further required by claim 18. The Examiner argues that “the hinge of the device constitutes a cross member and is capable of being used to connect two guide members (e.g., it can act as a support member for a connector...)” (See Office Action dated July 19, 2007.) The hinge of Oxland that the Examiner refers to is simply a pin about which the blades (68, 70) can rotate to open and close the device. Oxland gives no indication that this hinge is *capable* of connecting *two tissue retractor and guide devices*. In fact, because the pin is fully seated within a bore formed in the blades, there is nothing on

the pin that would even allow it to connect to another tissue retractor device. Accordingly, claim 18 further distinguishes over Oxland and represents allowable subject matter.

For all of these reasons, independent claims 18 and 21, as well claims 19, 20, and 23-26 which depend therefrom, are not obvious in view of Oxland and represent allowable subject matter.

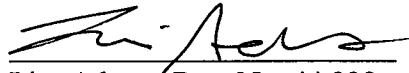
Conclusion

Applicants submit that all pending claims are in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

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CLAIMS

1. (Previously Presented) A tissue retractor and guide device, comprising:
an elongate member having a proximal portion and a substantially planar distal portion adapted to retract tissue, wherein a distal-most surface of the elongate member is substantially concave to match the contour of a vertebral body; and
a guide member coupled to the distal portion of the elongate member such that the substantially planar distal portion of the elongate member extends a distance beyond a distal-most end of the guide member to form an extension portion, the guide member having at least one lumen extending therethrough for receiving a tool, and at least one mating element formed thereon and adapted to mate to a spinal implant.
2. (Original) The device of claim 1, wherein the guide member has a width that is equal to or less than a width of at least a portion of the distal portion of the elongate member such that the distal portion of the elongate member is effective to retract tissue disposed adjacent to the guide member.
3. (Original) The device of claim 1, wherein the guide member includes two lumens extending therethrough and positioned at an angle with respect to one another.
4. (Previously Presented) The device of claim 1, wherein the extension portion is adapted to align the at least one lumen in the guide member with a spinal implant mated thereto.
5. (Cancelled).
6. (Cancelled).
7. (Currently Presented) The device of claim 1, wherein the at least one mating element is selected from the group consisting of a pin, spike, groove, cleat, hole, hook, threaded hole, threaded pin, and combinations thereof.

8. (Previously Presented) The device of claim 1, wherein the at least one mating element has a shape that is adapted to prevent rotation between the guide member and a spinal implant when the guide member is mated to the spinal implant.
9. (Original) The device of claim 1, wherein the guide member comprises a first barrel having a lumen extending therethrough, and a second barrel having a lumen extending therethrough.
10. (Original) The device of claim 9, wherein the first and second barrels are positioned at an angle with respect to one another.
11. (Original) The device of claim 9, wherein the first and second barrels lie in a plane substantially parallel to at least a portion of a front surface of the distal portion of the elongate member.
12. (Original) The device of claim 9, wherein at least one of the first and second barrels of the guide member has an adjustable trajectory such that the barrel can pivot about a point on a longitudinal axis thereof.
13. (Original) The device of claim 9, wherein at least one of the first and second barrels is removably mated to the guide member.
14. (Original) The device of claim 1, wherein the proximal portion of the elongate member is positioned at an angle with respect to the distal portion of the elongate member.
15. (Original) The device of claim 14, wherein the angle is in the range of about 110° to 160° .
16. (Original) The device of claim 1, wherein the proximal portion includes a clamp member adapted to mate to an external support.
17. (Original) The device of claim 1, wherein the proximal portion includes a post adapted to

attach to a clamp member on an external support.

18. (Previously Presented) A tissue retractor and guide kit, comprising:

at least one tissue retractor and guide device, having

a guide member having first and second barrels that define first and second lumens for receiving a tool, and

an elongate member having a proximal, handle portion, and a distal, tissue-retracting portion that extends a distance beyond a distal-most end of the guide member to form an extension portion,

wherein at least one of the guide member and the elongate member is adapted to couple to a spinal implant and the extension portion is adapted to rest against an outer edge of the spinal implant to align the guide member with the spinal implant; and

a cross member adapted to removably connect two tissue retractor and guide devices.

19. (Original) The kit of claim 18, wherein the cross member comprises a substantially rectangular housing.

20. (Original) The kit of claim 18, wherein the cross member comprises an elongate rod having opposed ends, each end being adapted to a removably mate to a tissue retractor and guide device.

21. (Previously Presented) A spinal fixation kit, comprising:

a spinal fixation plate having

a superior portion with at least one bore formed therein for receiving a fixation device effective to mate the superior portion to a first vertebrae, and

an inferior portion with at least one bore formed therein for receiving a fixation device effective to mate the inferior portion to a second, adjacent vertebrae; and

at least one tissue retractor and guide device having

an elongate member with a proximal, handle portion and a distal portion adapted to retract tissue when the at least one tissue retractor and guide device is mated to the spinal fixation plate, and

a guide member mated to the distal portion of the elongate member and having first and second barrels that define first and second lumens extending therethrough for receiving a tool, the guide member being adapted to mate to at least a portion of the spinal fixation plate such that each lumen in the guide member is aligned with a bore formed in the spinal fixation plate;

wherein a distal-most end of the elongate member extends a distance beyond a distal-most end of the guide member to form an extension portion, the extension portion being adapted to rest against an outer edge of the spinal fixation plate to align the guide member with the spinal fixation plate.

22. (Cancelled).

23. (Previously Presented) The kit of claim 21, wherein a distal end of the guide member has at least one mating element formed thereon and adapted to mate with a corresponding mating element formed on the spinal fixation plate.

24. (Original) The kit of claim 23, wherein the at least one mating element has a shape that is adapted to prevent rotation of the guide member with respect to the spinal fixation plate when the guide member is mated to the spinal fixation plate.

25. (Previously Presented) The kit of claim 21, wherein the superior and inferior portions of the spinal fixation plate are slidably movable with respect to each other between a retracted position and an extended position.

26. (Original) The kit of claim 25, further comprising a cross member effective to mate two tissue retractor guide devices to one another, and to maintain the spinal fixation plate in the extended position when the devices are mated to the superior and inferior portions of the spinal fixation plate.